29(5) to two years' imprisonment and this, of course, by reason of section 295 of the Criminal Procedure Code involves liability to an order for police supervision.

Here the prosecution case was that about midnight on 21st January a Police Inspector found a bicycle without its dynamo in Jalan Tallala. For a reason which he did not state in evidence he went straight to the house of the appellant and he found him asleep. He asked the appellant where was the dynamo of the bicycle he had found in the street. The appellant denied all knowledge of this dynamo and the Inspector and another Police Officer then searched the house and found a motor-cycle dynamo at the side of the appellant's bed. The appellant was then arrested.

At his trial the appellant and his brother gave evidence. From that evidence it is fairly clear that the appellant's brother had something to do with the theft of the dynamo which was missing from the bicycle found by the Police in the street. As regards the motor-cycle dynamo which was in fact found in the possession of the appellant both witnesses agreed that this was given to the appellant by his brother who said he had had it from a friend to be sold.

On this the Magistrate convicted the appellant. In my opinion he was wrong.

Before a conviction can be made out under section 29(1) it must be proved in the first place that the property in possession of which the accused person is found is something "which may be reasonably suspected of being stolen". That suspicion may, of course, attach to the property in a number of ways. It may arise from the nature of the property, as where a beggar is found in possession of a diamond ring. It may arise from the behaviour of the accused person, as where he runs away when approached by a Police Officer. There must, however, be something in the circumstances which gives reasonable ground for suspicion. In the present case there was nothing of the sort. There is nothing inherently suspicious in being in possession of an old dynamo and in fact this dynamo was not the stolen one for which the Police were looking.

The truth is that the appellant is a man of very bad character with a number of previous convictions. This was of course kept out of the prosecution case though it was brought to the notice of the Magistrate after conviction. It is quite clear that the Police searched the appellant's premises because they knew he was a bad character and that this was the real basis of their suspicion that anything found in his possession was probably stolen. This, of course, may well have been justification for searching his premises when a partially-stripped bicycle was found nearby but it was no justification for prosecuting him when in fact he was not found in possession of any stolen property or any property which was suspect only by reason of his own bad character.

The conviction is quashed.

Appeal allowed.

Re TAN LAM SUN

[R. Cr. J. (Rigby J.) April 13, 1960]

[Penang — Criminal Revision No. 3 of 1960]

Road Traffic — Weighing of vehicle — Weight in excess of that permitted under condition of permit — Offence brought to light by weighing of vehicle independently of authorisation — Road Traffic Ordinance, 1958, ss.53 and 120(2).

The fact that a vehicle is weighed on an accurate weigh-bridge and that its laden weight is found to be in excess of that permitted under the conditions of the Permit is sufficient to constitute the offence under section 120(2) of the Road Traffic Ordinance, 1958. Whether or not the Enforcement Officer in question was the holder of any valid authority in writing from the Commissioner of Road Transport and whether or not he had required the offender to proceed to the weigh-bridge for the purpose of being weighed were wholly irrelevant to the facts of the case.

REVISION made in Chambers.

Rigby J.: This case has very properly been referred by the learned Magistrate to this Court with a view to revision. The defendant was charged under section 120(2) of the Road Traffic Ordinance, 1958, with contravening the conditions of an Emergency Permit granted to him in respect of goods vehicle P. 2348. Under the conditions of the Permit the maximum laden weight which the vehicle was permitted to carry was 143 cwts. On the day and at the place in question it was, in fact, found that its maximum laden weight was 8 tons 1 cwt.

The brief facts of the case were that acting on information received an Enforcement Officer of the Road Transport Department set out to intercept the defendant's lorry. Either accidentally or by design — and presumably the latter — the Officer did not, in fact, intercept the lorry until it had proceeded to the New Ferry Terminal and was actually standing on the weigh-bridge where it was weighed for the purpose of assessing the fare for the ferry crossing to Butterworth. The Officer stood by while the lorry was, in fact, weighed and he then noticed from the dial on the weigh-bridge that it registered 8 tons 1 cwt. The weighing clerk attached to the Penang Port Commission gave evidence as to weighing the lorry. He described the procedure followed and produced the original weighing ticket which showed the weight of the lorry to be 8 tons 1 cwt. He further produced a certificate of accuracy as to the weigh-bridge itself.

At the close of the case for the prosecution defending Counsel submitted that there was no case to answer since the provisions of section 53 of the Road Traffic Ordinance had not been complied with. That section merely provides that any Road Transport Officer duly authorised in writing in that behalf by the Commissioner of Road Transport so to do, may require any person in charge of any motor vehicle to proceed forthwith to a weigh-bridge for the purpose of being weighed. The Enforcement Officer had apparently produced in evidence a letter purporting to be some form of authority under section 53. The learned Magistrate was satisfied that

the letter so produced was, in fact, not an authority to the Enforcement Officer within the meaning of section 53. He accordingly ruled that since the Enforcement Officer was not in possession of the required authority in writing under section 53 there was no case to answer, and he acquitted and discharged the defendant. Subsequently, on re-consideration, the learned Magistrate himself came to the conclusion that he had misdirected himself in law in that the provisions of section 53 were wholly irrelevant to the facts of this case. I agree with that view. On the facts, it was quite clear that the vehicle had been weighed on an accurate weigh-bridge and that its laden weight was found to be in excess of that permitted under the conditions of the Permit granted to the defendant. That was sufficient to constitute the offence charged. Whether or not the Enforcement Officer in question was the holder of any valid authority in writing from the Commissioner of Road Transport and whether or not he had required the defendant to proceed to the weigh-bridge for the purpose of being weighed were wholly irrelevant to the facts of the case. I, therefore, set aside the Order made by the learned Magistrate acquitting and discharging the defendant and direct that the case be remitted to the Magistrate for him to hear the defence.

Order accordingly.

ASMABAI v. MOTILAL DOSHI & ANOR.

[O. C. J. (Ong J.) April 21, 1960]

[K. L. — Civil Suit No. 180 of 1957]

Landlord and Tenant — Partnership — Partner holding premises on trust for partnership — Dissolution of partnership — Whether tenancy created between original landlord and partnership — Whether sub-tenancy created between lessee and partnership — Control of Rent Ordinance, 1956.

On March 27, 1950, one Abasbhoy, occupier of No. 47 Batu Road, Kuala Lumpur, entered into a partnership with the defendants to carry on in the same premises the business of textile merchants.

On October 15, 1954, Abasbhoy died and probate of his will was granted to the plaintiff (his widow) and a son as executors. Pursuant to clause 19 of the partnership deed, the plaintiff, as legal representative of the deceased, became a partner in the firm.

In September 1955, the plaintiff in her personal capacity purchased the premises and was registered as proprietor. On February 19, 1957, she gave notice terminating the tenancy as from March 31. On the same day, the legal representatives of the deceased as co-partners gave notice to the defendants that they did not wish to continue the partnership business after March 20, 1957. A notice of dissolution was published in the various newspapers with the consent of all the partners.

On these facts, the plaintiff claims possession of the premises, mesne profits from April 1, 1957 and costs.

Held: (1) on the construction of the partnership deed, clauses 5 and 18 are not irreconciliable if the latter is read as applying only in the event of the partnership extending beyond the original term of 7 years;

(2) even if clauses 5 and 18 conflict, clause 5 must prevail over clause 18, following *Forbes* v. *Git* (3);

(3) on the construction of the agreement, the relationship of landlord and tenant was created as between Abasbhoy and the partnership, notwithstanding the label of a trust they had put upon this relationship;

(4) alternatively, the effect of the agreement was to substitute the partners, in the place of Abasbhoy, as tenants of the original landlord, because an underlease for the residue of a term is in law an assignment;

(5) therefore, on either view, the defendants were entitled to the protection of the Control of Rent Ordinance, 1956 as statutory tenants.

Cases referred to:—

(1) *M'Connel* v. *Murphy* (1873) L.R. 5 P.C. 203, 218.
(2) *Bedson's Trusts* (1885) 28 Ch. D. 523, 525.
(3) *Forbes* v. *Git* [1922] 1 A.C. 256, 259.
(4) *W.A. Buttery* v. *James Warren & Co. Ltd.* [1957] M.L.J. 56.
(5) *Doe* v. *Bluck* 8 C. & P. 464; 173 E.R. 577.
(6) *Benham* v. *Gray* 136 E.R. 827.
(7) *Burdon* v. *Barkus* 45 E.R. 1098.
(8) *Pocock* v. *Carter* [1912] 1 Ch. 663.
(9) *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386.
(10) *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513.
(11) *Lewis* v. *Baker* [1905] 1 Ch. 46, 50.

ACTION.

D. G. Rawson for the plaintiff.

R. Ramani for the defendants.

Cur. Adv. Vult.

Ong J.: In this action the matter in controversy is the right to the possession of the ground floor of premises No. 47 Batu Road, Kuala Lumpur, which are admittedly controlled premises, the exclusive possession of which was given to a partnership for its duration by the partnership agreement, and continues to be retained by the ex-partners since dissolution. This issue can only be resolved by the construction of the partnership agreement and by taking into consideration the effect of the Control of Rent Ordinance upon the relationship of the parties when the partnership came to an end.

The facts, so far as they are material can be dealt with in a small compass.

The plaintiff is the widow of one Abasbhoy, at one time the sole proprietor of "A. Dawoodbhoy & Co.", dealer in textiles and occupier of the said premises as monthly tenant. On March 27, 1950, Abasbhoy had entered into a partnership with the defendants to carry on in the same premises the business of textile merchants under the style of "Motilal Store". The relevant clauses in the deed of partnership are:

"5. The partners shall carry on the said business in partnership for a continuous period of seven (7) years commencing from the 20th of March, 1950 and if the partner *(sic)* at the expiration of the said period of seven years agree to extend the said period it may be extended for such further period as the partners may decide."

"15. The Third Party who is the present tenant of premises No. 47 Batu Road, Kuala Lumpur wherein the partnership business is now being carried on shall continue the tenancy of the said premises holding same in trust for the partnership business and all the monthly